IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.12022 of 2002 (O&M)
Date of decision: 12.1.2011

Murari Lal & others **.....Petitioner(s)**

Versus

State of Haryana and others **.....Respondent(s)**

CWP No.17068 of 2002

Sher Singh **.....Petitioner(s)**

Versus

State of Haryana and others **.....Respondent(s)**

CWP No.6733 of 2004

Joginder Singh & another **.....Petitioner(s)**

Versus

State of Haryana and others **.....Respondent(s)**

CWP No.18663 of 2004

Gurdeep Singh **.....Petitioner(s)**

Versus

State of Haryana and others **.....Respondent(s)**

CWP No.18664 of 2004

Smt. Veena Sharma **.....Petitioner(s)**

Versus

State of Haryana and others **.....Respondent(s)**

CWP No.18665 of 2004

Jai Dev **.....Petitioner(s)**

Versus

State of Haryana and others **.....Respondent(s)**

CORAM:- HON'BLE MR.JUSTICE JASBIR SINGH
HON'BLE MR.JUSTICE RAKESH KUMAR GARG

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Present: Mr. A.K.Chopra. Sr. Advocate with Mr. G.S. Sullar, Advocate for the petitioner(s).

Mr. Anil Kshetarpal, Advocate.

Mr. Ravinder Jain, Advocate.

Mr. G.C. Shahpuri, Advocate.

Ms. Palika Monga, DAG, Haryana.

Rakesh Kumar Garg, J.

This is a bunch of six writ petitions. The petitioners herein have challenged acquisition of their land, which was proposed by issuing notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') on 2.5.2001. Further challenge is to the declaration issued under Section 6 of the Act on 30.4.2002.

As per the averments, the brief facts of these petitions are that the respondents issued a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') on 21.4.1987 showing their intention to acquire the land including the petitioners' land Declaration under Section 6 of the Act was issued on 2.4.1988. The aforesaid action of the respondents in seeking to acquire the petitioners' land was challenged by a number of land owners before this Court by filing many writ petitions including CWP No.5155 of 1990. The aforesaid writ petition was disposed of on 2.5.2000. While adjudicating upon the controversy raised in the aforesaid writ petitions, the notifications issued by the respondents seeking to acquire the land of the petitioners was set aside.

The respondents issued another notification under Section 4 of

the Act on 2.5.2001 for acquisition of the land of the petitioners. The petitioners filed objections under Section 5A of the Act. After examining the objections, the Land Acquisition Collector submitted the report to the Government. Thereafter, the Government issued declaration under Section 6 of the Act on 30.4.2002. CWP Nos.7539 of 2001, 8321 of 2002, 12022 of 2002 and 13948 of 2002 challenging the acquisition proceedings were admitted for hearing by this Court. However, CWP No. 17068 of 2002 was dismissed by this Court vide judgment dated 21.5.2004. While passing this judgment, this Court also passed the order which reads as under:

> "During the course of hearing of the instant writ petition on 23.3.2004, learned counsel for the petitioner stated that a large number of writ petitions raising similar/identical pleas have been admitted and the disposal of one would result in the disposal of all the said writ petitions. Illustratively, reference was made to CWP Nos. 7539 of 2001, 8321 of 2002, 12022 of 2002 and 13948 of 2002. In the aforesaid view of the matter, the aforesaid cases be listed for hearing in the motion list, after notice to the counsel for the parties on 29.5.2004. A copy of the order passed in the instant writ petition be placed on the record of the aforesaid writ petitions for reference."

Thereafter, CWP No.12022 of 2002 and other writ petitions were also dismissed by this Court vide judgment dated 16.8.2004 and holding that the writ petitions were covered by the decision rendered by this Court in Sher Singh v. The State of Haryana and others (CWP No. 17068 of 2002 decided on 21.5.2004). Similar other writ petitions were also dismissed. Thereafter, the writ petitioners approached the Hon'ble

Supreme Court challenging the order of dismissal of their writ petitions by this Court. The Hon'ble Supreme Court vide its judgment dated 11.1.2010 remitted the petitions to this Court for fresh consideration observing as under:

> "5. On a careful consideration, we agree with the contentions of the appellants. In fact, the appellants have produced some documents to show that structures were existing in their acquired lands and that the inspecting committee had recommended that their lands should not be acquired. However, this material has not been considered. We are of the view that the High Court ought to have considered each case of the appellants at least briefly with reference to the facts, that is, whether there were any structures, whether the inspecting committee had recommended for not proceeding with the acquisition or for excluding their properties from acquisition; and whether the Director of Urban Estates had considered whether release of land in each of these cases would disturb the planning/development. While there may not be need for High Court to examine and decide questions of fact, it has to at least satisfy itself that there was proper or adequate consideration of the case by the Director, Urban Estates."

Thereafter the parties filed their pleadings by moving various applications which were allowed to be placed on record. It may also be relevant to mention at this stage that vide order dated 10.8.2010, the Director Urban Estates, Haryana was also directed to file an affidavit

stating:

> "(i) Whether any structure existed in the land of the petitioners, which was subject matter of acquisition?
>
> (ii) Whether the Inspecting Committee had recommended that the petitioners' land should not be acquired?
>
> (iii) If it was so recommended, why the proposal was not accepted?
>
> (iv) Whether the Director of Urban Estates had considered that the release of land of the petitioners would disturb the overall planning/development?
>
> (v) Whether it was not possible to release constructed portion of the petitioners in view of Government policy in that regard?"

In response to the aforesaid order, an affidavit of Sh.T.C. Gupta, Director General, Town and Country Planning-cum-Director, Urban Estates, Haryana was filed mentioning the position of physical structures existing in the land under acquisition, as per Annexure A-1 attached with this affidavit, at the time of issuance of notification under Section 4 of the Act.

Noticing the contradictions in the existence of structures as per Annexure A-1 attached with the affidavit of Director, Town and Country Planning-cum-Director, Urban Estates, Haryana and survey report of the Joint Inspection Committee, a direction was given to redraft Annexure A-1 attached with this affidavit in terms of observations made in survey report dated 16.1.2002 and report of the Joint Inspection Committee.

In response to the aforesaid order dated 7.10.2010, another

affidavit of Town and Country Planning-cum-Director, Urban Estates, Haryana was placed on record vide order dated 16.11.2010. However, on 20.12.2010, the petitioners had demonstrated before this Court that the factual position given in the aforesaid affidavits was not correct. Notice was issued to Mr. T.C. Gupta, the then Director, Town and Country Planning-cum-Director, Urban Estates, Haryana and also to the other officers, who prepared the report annexed with the affidavit, as to why contempt proceedings be not initiated against them for filing a false affidavit. The reply to the aforesaid notice was filed vide affidavit dated 8.1.2011 supplying details of the structures existing when notification under Section 4 was issued.

In the aforesaid affidavit dated 8.1.2011, it was admitted by the respondents that there exists construction in the lands of petitioner Nos.2, 9 and 16 of CWP No.12022 of 2002 as per the report of the LAO. However, the Joint Inspection Committee recommended to include the land of the aforesaid petitioners in the declaration under Section 6 of the Act for acquisition. With regard to other petitioners of CWP No.12022 of 2002, it was submitted that no case was made out for exemption of land in their favour as the constructed areas of petitioner Nos.2, 3, 5 and 15 was released and the land of other petitioners was found to be vacant.

It was further submitted that the petitioners of CWP No.6733 of 2004 were not entitled to any benefit as they had become owners of the suit land after issuance of notification under Section 6 of Act dated 30.4.2002, vide sale deed dated 22.3.2004 and there was no structure on their land at the time of notification under Section 4 of the Act.

It was also submitted that Sher Singh, petitioner, in CWP No.17068 of 2002 was not entitled to any relief as he had also filed CWP No.12022 of 2002 being petitioner No.15.

It was also submitted that CWP Nos.18663 to 18665 that the writ petitions are not maintainable as the same were filed after passing of the award. Award in this case was passed on 27.4.2004. On the basis of the aforesaid submissions, it was prayed that the writ petitions be dismissed.

We have heard learned counsel for the parties and perused the pleadings and the documents placed on record of this case.

In support of his argument, learned counsel appearing on behalf of the petitioners has pointed out that the acquired land was in patches and no useful purpose will be served by acquiring the same as no development work can be made by the respondent-State. It was also pointed that land of Savitri Devi was released on the ground of construction. However, the similar relief has not been granted to the petitioners. It was also argued that one Randhir Singh, whose land has been acquired, had purchased the land after its release from the acquisition made on the basis of earlier notification and the same was not included in the present acquisition proceedings. Similarly land of Reliance Company was also not acquired. According to the learned counsel for the petitioners, petitioner Nos.9, 12, and 16, whose land was recommended for release by the Land Acquisition Collector, were not given an opportunity to substantiate that they were also entitled to the similar relief as pointed out above and their land was included vide declaration under Section 6 of the Act, illegally.

On the other hand, learned counsel for the respondents has vehemently argued that they have acquired the land in dispute in accordance with law and the policy of the State of Haryana as framed. The petitioners were not entitled to the exemption and thus, no discrimination has been done to them and wherever the existing structures were found

such lands have been exempted and only the vacant lands have been acquired. However, it could not be disputed that even vacant lands of certain individuals and existing structures of many similarly situated persons such as petitioners No.2, 9 and 16 were exempted.

The contention of the petitioners before this Court is that the action of the respondents in not releasing their land from acquisition proceedings, is discriminatory. In this behalf, it is pointed out that certain lands, which were proposed to be acquired, were released from acquisition proceedings despite the fact that the same were vacant land i.e. without any construction thereon. Not only this, there exists residential houses/shops/structures/buildings of the petitioners in the acquired land which were liable to be exempted as per the policy of the State of Haryana and moreover while including the land for making a declaration under Section 6 of the Act recommendations of the LAO were not kept in mind and not only this, it is also the case of the petitioners that lands/existing structures of many other persons similar to the petitioners were exempted from acquisition.

Thus, after hearing learned counsel for the parties, we are of view that in the report of the LAO, he found structures/residential houses of petitioners No.2, 9 and 16 and despite his recommendations, the State Government had not accepted the recommendations and has acquired the land against the policy. Moreover, structures of many similarly situated persons such as Savitri Devi were exempted, whereas the same relief was denied to the petitioners. Not only this, even vacant lands of many individuals who even purchased such lands after issuance of notification under Section 4 of the Act, were also exempted. Thus, in our view petitioners No.2, 9 and 16 have been treated with hostile discrimination which is not permissible.

Thus, action of the State Government in treating petitioner Nos.2, 9 and 16 differently although they are situated similar to the land owners whose lands have been released cannot be countenanced and has to be declared bad in law as it is unfair on the part of the State Government in not considering the representations of the petitioners by applying the same standards which were applied to other land owners while withdrawing from acquisition their land under the same acquisition proceedings. Thus, action of the respondents in not extending the same benefit to them, amounts to arbitrary, discriminatory and colourable exercise of power and therefore, the impugned notifications and subsequent acquisition proceedings were liable to be set aside.

It may also be noticed at this stage that both the parties have not challenged the legality of the policy of the State of Haryana in releasing the land and in fact the petitioners have sought relief on the basis of the aforesaid policy issued by the State of Haryana and there is no challenge to the said policy. Thus, keeping in view the stand taken by the parties, the action of the respondents in acquiring the existing structures of petitioner Nos.2, 9 and 16 of CWP No.12022 of 2004 cannot be sustained and is liable to be quashed and there residential houses/existing structures along with proportionate vacant land are liable to be exempted from acquisition.

However, the other petitioners in CWP No.12022 of 2002 have failed to substantiate their claim of any discrimination done to them on the basis of the policy of the State of Haryana.

It may also be noticed that CWP Nos.18663 to 18665 are not maintainable in view of the judgment of the Hon'ble Supreme Court in **Star Wire (India) Limited v. State of Haryana and others** (1996) 11 SCC 698 as same were filed by the petitioners after passing of the award. In view of

the aforesaid judgment of the Honble Supreme Court, petitioner in CWP No.6733 of 2004 is also not entitled to any benefit as he was not the owner of the suit property on the date of notification under Section 4 of the Act.

CWP No.17068 of 2002 is also liable to be dismissed in view of the fact that petitioner-Sher Singh has also filed CWP No.12022 of 2004 without disclosing the aforesaid facts of the earlier writ petition. Resultantly, all the writ petitions are dismissed except allowing CWP No.12022 of 2002 to the extent of relief granted to petitioner Nos.2, 9 and 16 of the said writ petition as aforesaid. No costs.

(RAKESH KUMAR GARG)
JUDGE

January 12, 2011 **(JASBIR SINGH)**
ps **JUDGE**

liable to be quashed and there residential houses/existing structures along with proportionate vacant land are liable to be exempted from acquisition.

and their cases for release of land are liable to be reconsidered by the respondents in the light of the observations made by this Court in the foregoing paragraphs of this judgment. Thus, a direction is given to the Director, Town and Country Planning-cum-Director, Urban Estates, Haryana to consider their cases within a period of three months from the date of receipt of certified copy of this judgment.